

DECISION



24734
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-209750

DATE: April 5, 1983

MATTER OF: Kreonite, Inc.

DIGEST:

1. GAO will dismiss protest alleging that specification is unduly restrictive when it is not filed before bid opening.
2. Bid proposing "equal" film processor in response to brand name or equal invitation may be rejected as nonresponsive when solicitation calls for stainless steel tanks, but bidder offers plastic tanks.

Kreonite, Inc. protests the award of a contract for film processing equipment to Hope Industries, Inc. by the Sacramento, California Army Depot. The brand name or equal solicitation, No. DAAG08-82-B-0443, specified Hope Industries equipment for each of 24 line items. The solicitation required bidders to quote on all items and stated that these would be awarded as a unit to the lowest responsive, responsible bidder. Kreonite contends that the Army improperly rejected its low bid as nonresponsive. We deny the protest on this basis.

Of 14 firms solicited, only Hope Industries and Kreonite responded. The Television Audio Support Activity evaluated these bids and initially found Kreonite's non-responsive with regard to production output requirements for five different line items (Nos. 1, 4, 5, 23, and 24). In a second evaluation, made at approximately the same time as the protest was filed, the Activity further determined that Kreonite's equipment did not meet specifications for item 4 because it had plastic tanks instead of stainless steel tanks and a processing speed of 25.44 inches a minute, instead of the "approximately 30" inches specified. The Army therefore awarded a contract to Hope Industries on October 29, 1982.

Kreonite argues that the Army improperly found its bid nonresponsive because production output requirements were not specified for the items in question. In addition, the firm maintains that the stainless steel tank requirement is

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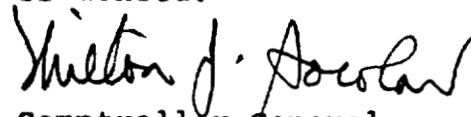
unduly restrictive and exceeds the minimum needs of the Government. The Army, however, contends the output requirements, while not explicitly stated in the solicitation, were implied by the use of specific Hope Industries' model numbers, which incorporate a code that is known industry-wide. The Army also argues that Kreonite's protest regarding the stainless steel tank requirement is untimely, since this was an alleged deficiency that was apparent on the face of the solicitation.

We agree that the latter basis of protest is untimely, since bid opening was August 20, 1982. Under our procedures, this is the latest possible date that a protest alleging that the stainless steel tank requirement was unduly restrictive could have been filed. See 4 C.F.R. § 20.2 (1982). Kreonite's protest, however, was not filed until November 3, 1982, following its notification of the award to Hope Industries. We therefore dismiss the protest on this basis.

As for rejection of the bid as nonresponsive, we think it is clear that Kreonite took exception to the Army's requirement for stainless steel tanks. We have already ruled, in a decision involving the same protester and the same requirement, that an offer of plastic tanks for a black and white print processor rendered the bid nonresponsive. See Kreonite, Inc., B-199361, July 22, 1980, 80-2 CPD 62.

In view of this holding, we do not find it necessary to determine whether the procuring activity properly determined that Kreonite's bid was nonresponsive to items 1, 5, 23, and 24 in the protested procurement, since it properly rejected the bid because of Kreonite's failure to meet the requirements of item 4.

The protest on this basis is denied.

for 
Comptroller General
of the United States